STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0738

Christopher Abdul-Haqq, et al.,
Respondents,

vs.

David LaLiberte, et al.,
Appellants.

Filed January 30, 2023
Affirmed
Frisch, Judge

Hennepin County District Court
File No. 27-CV-20-6092

Tom Boyd, Gerald H. Fornwald, Chelsea A. Ahmann, Winthrop & Weinstine, P.A., Minneapolis, Minnesota (for respondents)

Tim L. Droel, Stephen F. Buterin, Joseph P. Haase, Droel PLLC, Bloomington, Minnesota (for appellants)

Considered and decided by Slieter, Presiding Judge; Reyes, Judge; and Frisch, Judge.

SYLLABUS

Minnesota law does not recognize a qualified privilege for defamatory statements made while dispensing unsolicited career advice.

OPINION

FRISCH, Judge

In this defamation action, appellant argues that the district court erred by denying his motion for summary judgment and concluding that Minnesota law does not recognize

a qualified privilege for defamatory statements made while dispensing unsolicited career advice. Appellant also argues that the district court abused its discretion by denying a new trial on the basis of certain trial-management and evidentiary rulings. Because Minnesota law does not recognize a qualified privilege for defamatory statements made while dispensing unsolicited career advice and the district court did not abuse its discretion in its trial-management and evidentiary rulings, we affirm.

FACTS

Appellant David LaLiberte owns and operates appellant Liberte Construction, LLC, a storm-damage repair company.[1] LaLiberte periodically hired sales representatives to conduct inspections on potential projects and sign contracts with homeowners. In around 2017, LaLiberte contracted with Liam Hawkins to conduct such work.

In March 2020, Hawkins contracted to work for a company associated with respondent Christopher Abdul-Haqq (Chris). After entering into this agreement, Hawkins attempted to finalize all projects related to his work with LaLiberte. In April 2020, Hawkins sent a text message to LaLiberte about one such project. LaLiberte responded to Hawkins with a series of unrelated, unsolicited text messages. In those messages, LaLiberte disparaged Chris and his brother, respondent Stephen Haqq (Stephen). Relevant to this appeal, LaLiberte stated to Hawkins, "[Stephen] was charged for leud [sic] sexual conduct with a minor" and "These are the guys that have F rstings [sic] with BBB but just change the name of the company. Just like we warn people about."

[1] Although Liberte Construction is also a named party, in this opinion, we refer to appellant in the singular as LaLiberte.

Hawkins was "flabbergasted" when he received the messages because they "came out of nowhere." LaLiberte explained that he sent the messages to Hawkins so that Hawkins could make an informed decision about continuing to work for his new company and because he did not want something bad to happen "to a friend of [his]." LaLiberte terminated his business relationship with Hawkins a few weeks after sending the messages. Hawkins later showed the disparaging text messages to Chris.

Chris and Stephen (collectively, the Haqqs) filed a complaint against LaLiberte alleging two counts of defamation per se based on the statements set forth in the text messages. LaLiberte answered the complaint and asserted claims against the Haqqs and third-party defendants. Following discovery, all parties moved for summary judgment. The district court dismissed all of LaLiberte's counterclaims and third-party claims. It granted LaLiberte's motion as to six statements set forth in the text messages. But the district court concluded that the statement accusing Stephen of having been charged with a sex crime was defamatory per se and granted summary judgment in favor of the Haqqs as to that statement. The district court also concluded that a genuine issue of material fact existed as to whether the statement "These are the guys that have F rstings [sic] with BBB but just change the name of the company" referenced the Haqqs. The district court held a jury trial to determine damages as to the defamatory per se statement and to allow the fact-finder to resolve fact questions about the second statement.

Before trial, the Haqqs took a trial deposition. The witness testified on cross-examination that LaLiberte had allegedly committed domestic violence against his ex-wife. Five business days before trial, LaLiberte filed a second amended witness list and for the

first time identified his ex-wife as a potential witness. The amended list did not include information about the specific substance of her expected testimony as required by the district court's scheduling order.

On the first day of trial, the district court granted LaLiberte's motion in limine to exclude evidence regarding the Haqqs' attorney fees. That same day, the district court was made aware that Stephen had tested positive for COVID-19 and, over LaLiberte's objection, allowed Stephen to testify via remote video technology. The district court also ruled that the ex-wife and several other rebuttal witnesses would not be allowed to testify because LaLiberte had not provided proper notice to the Haqqs.

During trial, Chris began to testify that he "spent $300,000." LaLiberte interrupted the answer with an objection and argued to the district court that Chris was about to testify about attorney fees contrary to the district court's in limine ruling. The district court overruled the objection, but Chris did not further elaborate on his answer and moved on to a different subject.

On the last day of trial, LaLiberte's attorney notified the district court that one of his witnesses had tested positive for COVID-19. He requested the witness be allowed to testify via remote video technology. The Haqqs objected, raising a concern that the witness did not have COVID-19 and did not wish to testify in person to avoid an active arrest warrant. Given this information, the district court stated that it would allow the witness to testify remotely upon the production of proof of a positive test. LaLiberte did not object to this ruling. LaLiberte later informed the district court that the witness did not provide proof of a positive test and that the witness would not be testifying at trial.

As to the defamatory per se statement, the jury awarded $50,000 in damages for humiliation and embarrassment and $150,000 in punitive damages. As to the second defamatory statement, the jury found that the statement referred to the Haqqs' business and awarded $100,000 in punitive damages. LaLiberte filed a motion for a new trial, alleging that certain evidentiary and trial-management rulings resulted in unfair prejudice. The district court denied the motion. LaLiberte appeals.

ISSUES

I. Did the district court err in denying LaLiberte's motion for summary judgment based on its determination that a qualified privilege did not apply to the defamatory statements?

II. Did the district court abuse its discretion by denying LaLiberte's motion for a new trial?

ANALYSIS

LaLiberte raises two issues on appeal. First, he argues that the district court erred by determining that a qualified privilege did not apply to all of the defamatory statements. Second, he argues that the district court abused its discretion in its evidentiary rulings and decisions with respect to the presentation of witnesses, warranting a new trial. We address each issue in turn.

I. Minnesota law does not recognize a qualified privilege for defamatory statements made while giving unsolicited career advice.

LaLiberte first challenges the district court's denial of summary judgment, arguing that he is entitled as a matter of law to a qualified privilege for his defamatory statements. LaLiberte argues that, although Minnesota law has not explicitly recognized a qualified-privilege defense for defamatory statements made in providing unsolicited career advice,

we should now recognize a qualified privilege in this context as consistent with our established authorities. We disagree.

Summary judgment is appropriate if "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. "We view the evidence in the light most favorable to the party against whom summary judgment was granted." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). We review de novo the district court's application of the law. *Id.* at 77.

"A false accusation of a crime is defamatory per se." *Aromashodu v. Swarovski N. Am. Ltd.*, 981 N.W.2d 791, 798 (Minn. App. 2022). But a speaker is not liable for defamation if a qualified privilege protects the defamatory statement and the privilege is not abused. *Larson v. Gannett Co.*, 940 N.W.2d 120, 131 (Minn. 2020). The privilege only applies if the statement is made in good faith, upon a proper occasion, with proper motive, and is based upon reasonable or probable cause. *Bol v. Cole*, 561 N.W.2d 143, 149 (Minn. 1997). A qualified privilege can exist when an individual makes an unsolicited, good-faith report of suspected criminal activity to law enforcement. *Smits v. Wal-Mart Stores, Inc.*, 525 N.W.2d 554, 557 (Minn. App. 1994), *rev. denied* (Minn. Feb. 14, 1995).

The Minnesota Supreme Court has previously recognized a qualified privilege for statements made in the following relevant contexts: an employer's good-faith statements about a former employee in a requested character reference, *Stuempges v. Parke, Davis & Co.*, 297 N.W.2d 252, 257 (Minn. 1980); statements made in relation to an employer's investigation into employee misconduct, *Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 923 (Minn. 2009); an employer's communication to a former employee of the reasons for

the employee's discharge, *Lewis v. Equitable Life Assur. Soc'y of the U.S.*, 389 N.W.2d 876, 889-90 (Minn. 1986); bad credit references from lending institutions, *Froslee v. Lund's State Bank of Vining*, 155 N.W. 619, 620 (Minn. 1915); and, in the context of pending child-abuse allegations, a child's therapist's statements to the child's mother and county social services regarding the child's past sexual-abuse allegations, *Bol*, 561 N.W.2d at 150. These decisions reflect a policy determination that "statements made in particular contexts or on certain occasions should be encouraged despite the risk that the statements might be defamatory." *Bol*, 561 N.W.2d at 149 (quotation omitted). Whether a qualified privilege applies is a question of law that we review de novo. *Lewis*, 389 N.W.2d at 890.

LaLiberte admits that Minnesota has not explicitly recognized a qualified privilege for defamatory statements made while providing unsolicited career advice. He also admits that he is unaware of any jurisdiction that has recognized the privilege in this context. We too are unaware of any such authority. To the extent that recognition of the qualified privilege asserted by LaLiberte represents an expansion of the law, that expansion must come from the supreme court or the legislature and not this court. *See Butler v. Jakes*, 977 N.W.2d 867, 874 (Minn. App. 2022) (stating that we are an error-correcting court that does not change existing law); *Otto v. Comm'r of Pub. Safety*, 924 N.W.2d 658, 661 (Minn. App. 2019).

To the extent that LaLiberte argues that the common law already includes or recognizes the qualified privilege he asserts, we disagree. We do not equate an occasion where an employer responds to an affirmative inquiry for an employment reference to the

unsolicited dispensation of career advice.[2] As set forth above, Minnesota has specifically recognized a qualified privilege for solicited employment references. *See Stuempges*, 297 N.W.2d at 257 (explaining that it is "in the public interest that this kind of information be readily available to prospective employers" and that "unless a significant privilege is recognized by the courts, employers will decline to evaluate honestly their former employees' work records"). But no similar policy considerations exist in the provision of unsolicited career advice. And LaLiberte offers no reason why such unsolicited statements should be encouraged despite the risk that such statements might be defamatory. We likewise do not consider the delivery of unsolicited career advice to merit the same heightened policy protections as the unsolicited reporting of a crime to law enforcement. *See Smits*, 525 N.W.2d at 557 (explaining that public interest in citizens reporting suspected criminal activity to law enforcement outweighs the risk that some statements may be defamatory). Therefore, we hold that Minnesota law does not recognize a qualified privilege for defamatory statements made while dispensing unsolicited career advice. Because Minnesota law does not recognize a qualified privilege for the statements at issue in this action, the district court did not err by denying LaLiberte's motion for summary judgment.

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[2] Other jurisdictions have held that providing unsolicited advice or references in the employee-employer context is not protected by a qualified privilege. *See Henderson v. Teamsters, Chauffeurs, Warehousemen & Helpers Union, Local 313*, 585 P.2d 147, 151 (Wash. 1978); *Snodgrass v. Headco Indus., Inc.*, 640 S.W.2d 147, 160 (Mo. App. 1982); *see also Restatement (Second) of Torts* § 595 (1977) (describing qualified privilege in the defamation context and stating importance of considering whether the defamatory statement was "made in response to a request rather than volunteered by the publisher").

II. The district court did not abuse its discretion by denying LaLiberte's motion for a new trial.

LaLiberte next argues that he is entitled to a new trial because the district court abused its discretion in making certain trial-management decisions and evidentiary rulings. LaLiberte specifically argues that the district court impermissibly allowed Chris to testify about his attorney fees contrary to its in limine ruling; the district court did not treat the parties equally because it allowed one witness who tested positive for COVID-19 to testify remotely but required another witness to provide proof of a positive COVID-19 test before allowing remote testimony; and the district court did not allow LaLiberte to call a rebuttal witness.

"We review a district court's decision to grant or deny a new trial for an abuse of discretion." *Christie v. Est. of Christie*, 911 N.W.2d 833, 838 (Minn. 2018). The admission of evidence is within the broad discretion of the district court. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997). "In the absence of some indication that the [district] court exercised its discretion arbitrarily, capriciously, or contrary to legal usage, the appellate court is bound by the result." *Id*. at 46. "Entitlement to a new trial on the grounds of improper evidentiary rulings rests upon the complaining party's ability to demonstrate prejudicial error." *Kedrowski v. Lycoming Engines*, 933 N.W.2d 45, 62 (Minn. 2019) (quotation omitted). "An evidentiary error is prejudicial if it might reasonably have influenced the jury and changed the result of the trial." *Id.* (quotation omitted). We conclude that the district court did not abuse its discretion by

denying LaLiberte's motion for a new trial because all of its trial rulings were proper exercises of discretion and did not prejudice LaLiberte.

Damages Testimony

LaLiberte first argues that the district court abused its discretion by allowing Chris to testify about his attorney fees in violation of its in limine ruling. But Chris offered no such testimony. At trial, Chris was asked, "[C]an you identify any other damages you believe you have suffered as a result of these statements made by Mr. LaLiberte?" to which Chris responded, "Well, I've spent $300,000 . . . ." Before Chris could finish his answer, LaLiberte objected. The district court overruled the objection. Chris's attorney continued the examination, asking, "Setting aside what you were just trying to talk about, can you identify any other damage that you have suffered?" Chris then answered, describing the toll the litigation had taken on him.

The record does not support LaLiberte's assertion that this testimony referenced attorney fees. Chris did not identify the source of the $300,000 figure and made no mention of attorney fees. After LaLiberte objected, Chris's attorney asked a different question. LaLiberte argues that Chris's reference to $300,000 influenced the jury because the jury awarded $300,000 to the Haqqs. But the itemization of damages on the special-verdict form does not reflect an award for attorney fees. The jury awarded Stephen $50,000 for humiliation and embarrassment and $150,000 in punitive damages and awarded Chris $100,000 in punitive damages. It awarded no out-of-pocket damages. Although LaLiberte speculates as to the basis of the $300,000, the record does not contain evidence that Chris's

testimony contravened the district court's in limine ruling. We therefore see no abuse of discretion by the district court during this exchange at trial.

Proof of Positive COVID-19 Test for LaLiberte's Witness

LaLiberte next argues that the district court abused its discretion because it allowed Stephen to testify remotely after testing positive for COVID-19 but did not allow one of LaLiberte's witnesses to testify remotely without proof of a positive test. He asserts that the district court had no reason to disbelieve that his witness had tested positive for COVID-19 and that it unfairly treated his witness differently than Stephen.

The record belies LaLiberte's argument; the district court had a sufficient basis to require proof of a positive COVID-19 test from LaLiberte's witness because that witness had a warrant for his arrest. The Haqqs specifically argued that, given the last-minute timing of the request and the active warrant, there was good reason to suspect that the witness had not actually contracted COVID-19 and that production of a test result could address those concerns. No such concerns existed about Stephen. The district court specifically ruled that it would allow the witness to testify remotely, like Stephen, if the witness produced confirmation of a positive test. LaLiberte agreed with this compromise. The witness was unable to produce evidence of a positive test. LaLiberte did not ask for a continuance to attempt to obtain test results and did not attempt to call the witness at trial.

Given these circumstances, we see no abuse of discretion by the district court. The status of the two witnesses materially differed, and the district court offered LaLiberte an acceptable opportunity to produce the witness. Even so, LaLiberte failed to object to the district court's ruling at trial. *See Lines v. Ryan*, 272 N.W.2d 896, 904 n.8 (Minn. 1978)

(stating that Minn. R. Civ. P. 46 "requires a party to raise his objection to a court's order at the time it is made" and that "a litigant is not normally entitled to remain silent when he believes the court has committed error, and then raise his objection only if the jury returns an unfavorable verdict"). We therefore conclude that the district court did not abuse its discretion by requiring LaLiberte's witness to submit a positive COVID-19 test before allowing him to testify remotely.

Exclusion of Rebuttal Witness

Finally, LaLiberte argues that the district court's decision to exclude testimony from his ex-wife as a rebuttal witness to respond to accusations of domestic abuse was an abuse of discretion. We are not convinced. LaLiberte did not identify this potential witness until shortly before trial. She was not disclosed as a potential witness in response to the Haqqs' discovery requests, and LaLiberte did not include her on his first two witness lists submitted prior to trial. Even after LaLiberte identified the potential rebuttal witnesses five business days before trial, he did not include the required description of her expected testimony. Because the witness was not timely disclosed, the district court did not abuse its discretion by excluding the testimony.[3] *See Uselman v. Uselman*, 464 N.W.2d 130, 138 (Minn. 1990) (stating failure to timely disclose witnesses may warrant the exclusion of their testimony); *Gale v. County of Hennepin*, 609 N.W.2d 887, 891 (Minn. 2000) (stating that trial by ambush is a disfavored trial strategy).

[3] It is not clear whether or how the testimony would have impacted the result of the trial had she testified. The Haqqs did not seek damages against LaLiberte because of the domestic-abuse allegation, and there is no indication that the jury relied on this allegation to determine damages.

DECISION

Because Minnesota law does not recognize a qualified-privilege defense for defamatory statements made while offering unsolicited career advice, we affirm the district court's denial of LaLiberte's motion for summary judgment. And the district court did not abuse its discretion in its trial-management and evidentiary rulings.

Affirmed.